

**IN THE DRAWINGS:**

Please replace the drawings of record with Replacement Sheets 1/2 and 2/2. Figures 1/2 and 2/2 are now presented as formal drawings. Additionally, Replacement Sheet 1/2 includes changes to FIG. 1 in which descriptive text labels have been added in accordance with the Examiner's instructions in the Final Rejection dated February 5, 2008. No other substantive changes have been made to the drawings.

Attachment: Replacement Sheets 1/2 and 2/2

### **REMARKS/ARGUMENTS**

The Applicants originally submitted Claims 1-23 in the application. In the present response, the Applicants have amended Claims 6 and 16 solely to address the Examiner's claim objection. No other claims have been canceled or added. Accordingly, Claims 1-23 are currently pending in the application.

#### **I. Formal Matters and Objections**

The Examiner has objected to Figure 1 of the drawings as needing descriptive text labels. In response, the Applicants submit Replacement Sheets 1/2 and 2/2 in which Figure 1 now includes descriptive text labels. Accordingly, the Applicants respectfully request the Examiner to withdraw the objection to the drawings.

#### **II. Rejection of Claim 6 under 35 U.S.C. §112**

The Examiner has rejected Claim 6 under 35 U.S.C. §112, second paragraph for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. More specifically, the Examiner has stated that the limitation "transfer time" recited in line 2 of Claim 6 does not have sufficient antecedent basis. In response, the Applicants have amended Claims 6 and 16 to comply with 35 U.S.C. §112, second paragraph. Accordingly, the Applicants respectfully request the Examiner to withdraw the §112, second paragraph rejection of Claim 6 and allow issuance of the pending claims.

### III. Rejection of Claims 1-2, 5-12, and 15-23 under 35 U.S.C. §103

The Examiner has rejected Claims 1-2, 5-12, and 15-23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0102978 by Yahagi ("Yahagi") in view of U.S. Patent Application Publication No. 2004/0009751 by Michaelis, *et al.* ("Michaelis") and U.S. Patent Application Publication No. 20040066763 by Hashimoto *et al.* ("Hashimoto"). The Applicants respectfully disagree. More specifically, the Applicants disagree because the cited combination of Yahagi, Michaelis, and Hashimoto does not teach or suggest performing a data transfer between a mobile communication device and a communication server associated with each of at least two different candidate wireless communication networks and determining at least one data communication quality parameter by calculating a time needed for each data transfer as recited in independent Claims 1, 11, and 21.

The Examiner recognizes that Yahagi does not teach a quality parameter determined by calculating a time needed for each transfer and cites paragraphs 22-23 of Michaelis to cure this deficiency. The Examiner asserts that Michaelis teaches a typical round trip time (RTT) which is a communication quality parameter determined by calculating time needed for a data transfer. (*See* Final Rejection of February 5, 2004, page 4.) Without addressing whether an RTT is a communication quality parameter determined by calculating a time needed for a data transfer, Michaelis does not teach a round trip time. Rather, Michaelis teaches a "typical" round trip time. Michaelis teaches system latency may refer to the time delay in establishing a connection over a given network interface and access point 14 to serve packets for a particular communications application, as well as to establish a typical round trip time (RTT) associated with the established connection. (*See*, for example, paragraph 23 of Michaelis.)

Thus, Michaelis teaches a typical RTT is added to a time delay in establishing a connection to generate system latency. Michaelis does not teach or suggest performing a data transfer and calculating the time of that data transfer to be added to a time delay to generate system latency. On the contrary, the mobile communication device of Michaelis does not even perform a data transfer to generate system latency; it receives a system latency parameter based on a time delay added to a typical RTT kept by the access point 14. As such, Michaelis does not teach or suggest performing a data transfer between a mobile communication device and a communication server associated with each of at least two different candidate wireless communication networks and calculating a time needed for each data transfer and, therefore, does not cure the above-noted deficiency of Yahagi. Thus, the cited combination of Yahagi and Michaelis does not provide a *prima facie* case of obviousness for independent Claims 1, 11, and 21.

Hashimoto has not been cited to cure the above-noted deficiencies of the cited combination of Yahagi and Michaelis but to teach an RTT calculation is performed in a mobile communications device. (See Final Rejection of February 5, 2008, page 5.) As such, the cited combination of Yahagi, Michaelis, and Hashimoto does not establish a *prima facie* case of obviousness of independent Claims 1, 11, and 21 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection of Claims 1-2, 5-12, and 15-23 and allow issuance thereof.

#### **IV. Rejection of Claims 3-4 and 13-14 under 35 U.S.C. §103**

The Examiner has rejected Claims 3-4 and 13-14 under 35 U.S.C. §103(a) as being unpatentable over Yahagi in view of Michaelis and Hashimoto as applied to Claim 1 and further in

view of U.S. Patent Application Publication No. 2002/0087674 by Guilford, *et al.* ("Guilford"). The Applicants respectfully disagree.

As established above, the cited combination of Yahagi, Michaelis, and Hashimoto does not provide a *prima facie* case of obviousness of independent Claims 1 and 11. Guilford has not been cited to cure the above-noted deficiencies of the cited combination of Yahagi, Michaelis, and Hashimoto but to teach candidate networks can be GSM or UMTS and may employ different technologies such as GPRS or EDGE. (See Final Rejection of February 5, 2009, page 8.) Additionally, the Applicants do not find where Guilford cures the above-noted deficiencies of the cited combination of Yahagi, Michaelis, and Hashimoto. As such, the cited combination of Yahagi, Michaelis, Hashimoto, and Guilford does not establish a *prima facie* case of obviousness of independent Claims 1 and 11 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection of Claims 3-4 and 13-14 and allow issuance thereof.

**V. Conclusion**

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-23.

The Applicants request the Examiner to telephone the undersigned agent of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, PC

A handwritten signature in black ink that reads "Steven J. Hanke". The signature is written in a cursive, flowing style.

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